MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 306 OF 1996

THE STATE OF MAHARASHTRA .. APPELLANT

VERSUS

1. RAJARAM NARAYAN RAWOOL)
2. NARAYAN RAJARAM RAWOOL)
Both r/o Nemale-Deulwadi)
3. EKNATH GANGARAM RAWOOL)
4. SUNIL NAVSO MULIK)
Both R/o Nemale, Faujdarwadi) .. RESPONDENTS (original accused)

Mr. Y.S. Shinde, APP for appellant

Mr. S. M. Railkar h/f Smt. S.A. Mudbidri for respondents 1, 3 & 4.

CORAM: **SMT. RANJANA DESAI, J.**

DATE: OCTOBER 17, 2007.

ORAL JUDGMENT:

. Respondents were tried in the court of Judicial Magistrate First Class in Regular Criminal Case No. 121 of 1994 for offences punishable under Section 379 read with 34 of the Indian Penal Code. By the impugned judgment and order, the learned Magistrate acquitted the respondents. Hence the State of

Maharashtra has filed this appeal. For the sake of convenience I shall refer to the respondents as per their description in the trial court.

2. In short the case of the prosecution is that on 1/9/94 at 3 p.m. all the accused in furtherance of their common intention committed theft of two Khair trees belonging to Grampanchayat, village Nemale and thereby committed offence punishable under Section 379 read with 34 of the IPC.

3. The prosecution case rests on the evidence of four witnesses. PW 1 Atmaram Raul is a Sarpanch of village Nemale. According to him on 1/9/94 three Khair trees from the Grampanchayat land were cut and removed. PW 4 Gramsevak Satyavijay Sawant told him that he saw accused 1 and 4 taking cut wood in a rickshaw and accused 2 and 3 assisted them. According to this witness he waited for two days for the accused to return the wood. Since the wood was not returned he lodged complaint against the accused on 4/9/94. The said complaint is at Exh.-24. He has further stated that on 5/9/94 he visited the spot and drew spot panchnama and on 6/9/94 he went to the premises of Narayan Malwankar because the cut wood was kept by the accused there.

According to him accused 1 showed the cut wood. It was attached under panchnama.

4. It would be advantageous at this stage to have a look at the evidence of PW 4 Satyavijay Sawant. He has stated that on 1/9/94 at about 3 p.m. he went to Nemale. He was proceeding towards the Grampanchayat office. A rickshaw was standing near the house of accused 1 and accused 1 with the help of accused 4 was filling Khair wood logs in the rickshaw. According to him he told them that the wood belongs to the Grampanchayat and he should return it. He then went to the garden and found that one Khair tree was uprooted. He suspected that the logs which the accused had put in the rickshaw were of the same tree. He, therefore, went to the Sarpanch but the Sarpanch was not there. He went to the Sarpanch on the next day and informed him about the incident. The accused did not return the wooden logs. He has stated that the Sarpanch lodged the complaint on 4/9/94. On 6/9/94 he went to the garden of Malwankar along with the Sarpanch. The accused showed logs of wood lying under the tree. The police attached them under panchnama. In the cross-examination he has admitted that he did not witness the cutting of the

wood. He has admitted that there was no seal on the wood. From the evidence of these two witnesses it is clear that they have not seen the accused cutting trees. In fact the prosecution has not examined a single witness who had seen the alleged cutting of trees.

5. PW 4 Satyavijay Sawant has admitted in the cross-examination that Grampanchayat has a library near the garden and one Suresh Raul was a peon working there. However, the prosecution has not chosen to examine him. PW 1 Atmaram Raul has admitted that one Chandrahas Raul is working as Librarian in the said Library. He is also not examined. These witnesses being near the scene of offence could have witnessed the cutting of trees. Absence of independent evidence as regards cutting of trees makes prosecution story suspect.

6. Besides the complaint as regards the incident dated 1/9/94 is lodged on 4/9/94. There is a delay of three days in lodging the complaint. The explanation given for this delay by PW 1 Atmaram Raul and PW 4 Satyavijay Sawant is that they were waiting for the accused to return the wood. This can hardly be any explanation. As a Sarpanch of

the Grampanchayat it was the duty of PW 1 Atmaram Raul to immediately lodge the complaint. This delay in my opinion, is fatal to the prosecution case.

7. Morever PW 4 Satyavijay Sawant has admitted that there was no seal on the logs of wood. Whereas PW 1 Atmaram Raul has stated that three trees were removed, PW 4 Satyavijay Sawant has stated that he went to the garden and found that only one tree was uprooted. Therefore, it is not clear as to how many trees were uprooted.

8. It is pertinent to note that according to the prosecution the logs were kept in the premises of one Malwankar. PW 1 Atmaram Raul visited the said premises two days after the incident. There is no explanation given as to why he did not go to that place immediately. Morever the said Malwankar has not been examined. If the logs were recovered from the premises of Malwankar the prosecution ought to have examined Malwankar to establish the link between the logs recovered from the premises of Malwankar with the the trees allegedly cut by the accused. Malwankar was, therefore, a very important witness. For the reasons best known to

the prosecution the prosecution has not examined Malwankar.

9. The FIR i.e. Exh.-24 is totally silent about the role played by accused 2 and 3. It is also pertinent to note that while PW 1 and PW 2 have stated that theft was committed on 1/9/94, PW 5 SI Yeshwant Dignekar has stated that theft was committed on 25/8/94. The evidence of prosecution witnesses is, therefore, replete with contradictions. There is no consistency in the evidence of witnesses. There is delay in recording the FIR. No connection is established between the logs allegedly recovered from the premises of Malwankar with the trees allegedly cut by the accused.

10. It is well settled that while dealing with an appeal against order of acquittal, the appellate court has to keep in mind that the presumption of innocence of the accused is strengthened by the order of acquittal and unless compelling reasons are present suggesting that the impugned order is perverse, the appellate court should not interfere with it. It is also well settled that merely because on the same set of facts some other view is

possible the appellate court should not substitute the view taken by the trial court with that view, if the trial court's view is a reasonably possible view.

11. In the light of the above well settled principles, I am of the view that since the view taken by the trial court is a reasonably possible view, no interference is called for with the impugned judgment and order. The appeal is, therefore, dismissed.

JUDGE.

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RAJARAM NARAYAN RAWOOL & ORS. .. RESPONDENTS

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CORAM: **SMT. RANJANA DESAI,J.**

DATE: OCTOBER 17, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment, this court has dismissed the appeal.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 306 OF 1996

DATE OF DECISION:17/10/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an impor-

tant question of law and whether)
a copy of the judgment should be)
sent to Nagpur, Aurangabad and Goa)
Offices?)